

**BEFORE THE ARIZONA BOARD OF
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

IN THE MATTER OF:)	Case Nos. 2983
)	
PHILO ROGERS, D.O.)	FINDINGS OF FACT,
Holder of License No. 2809 for the)	CONCLUSIONS OF LAW
practice of osteopathic medicine)	AND BOARD ORDER FOR
in the State of Arizona.)	PROBATION AND DECREE
_____)	OF CENSURE

INTRODUCTION

This matter came before the Board of Osteopathic Examiners in Medicine and Surgery (hereafter "Board") for final consideration and decision at the Board's public meeting held on December 8, 2001. The Board held a formal administrative hearing. During the course of these proceedings, Philo Rogers, D.O. (hereinafter "Respondent") was present and represented by legal counsel, Daniel Jantsch. The State was represented by Assistant Attorney General Blair Driggs.

Based upon the testimony and documentary evidence submitted to the Board, the Board issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Board is empowered, pursuant to A.R.S. § 32-1800, et seq to regulate the licensing and practice of osteopathic medicine in the State of Arizona.

2. Respondent is a licensee of the Board and the holder of License No. 2809 for the practice of osteopathic medicine in the State of Arizona.

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2. Respondent is a licensee of the Board and the holder of License No. 2809 for the

practice of osteopathic medicine in the State of Arizona.

3. On or about January 25, 2000 the Board issued Findings of Fact, Conclusions of Law and Board Order for Probation based on information brought to the attention of the Board that Respondent was prescribing large amounts of controlled substances and failed to maintain adequate medical records. Respondent was placed on a two-year probation with the following terms and conditions:

- a. Attend twenty hours of continuing medical education;
- b. Undergo random chart reviews to insure appropriate prescribing.

4. On or about August 28, 2000 a random chart review was performed by Board staff indicating that on two instances Respondent ignored warnings from either a pharmacist or a pain management specialist that his patients were abusing narcotics. The review also showed that Respondent continues to prescribe extremely large doses of narcotics for complaints of low back pain. In the case of patient D.N. there was no evidence of pathology and Respondent continues to prescribe large doses of narcotics which are usually reserved for terminally ill patients.

5. On or about June 4, 2001 a random chart review was performed by Board Staff indicating that Respondent had prescribed high doses of medication and there was little documentation in the chart for the reason the patient was using the medication. The audit also stated that in the case of patient B.L., there was another warning letter to Respondent regarding the patient using several controlled substances at the same time. There was no evidence in the chart that Respondent answered these concerns or changed his method of prescribing.

6. On or about August 25, 2001 Respondent appeared before the Board regarding compliance with his Board Order. The Board was informed that the U.S. Department of Justice

Drug Enforcement Agency was investigating Respondent for various drug-related matters. The Board reviewed information that Respondent was prescribing controlled substances inappropriately and maintaining inaccurate and misleading medical records on patient M.W..

7. In public session, the Board voted on August 25, 2001 to send this matter to a Formal Administrative Hearing due to Respondent's failure to maintain adequate medical records, failure to comply with the Board's Order and inappropriate prescribing of controlled substances. The Board also found that Respondent was unable to competently and safely engage in the practice of medicine and was an immediate threat to the health, safety and welfare of the public.

CONCLUSIONS OF LAW

The aforementioned conduct alleged against Respondent constitutes unprofessional conduct as defined at A.R.S. § 32-1855:

- (5) Prescribing, dispensing or administering controlled substances or prescription only drugs for other than accepted therapeutic purposes.
- (19) Any conduct or practice contrary to recognized standards of ethics of the osteopathic medical profession; to wit, Section 5. "A physician shall practice in accordance with the body of systematized and scientific knowledge through study and clinical applications."
- (21) Failing or refusing to maintain adequate records on a patient.
- (26) Violating a formal order, probation or a stipulation issued by the Board under this chapter.
- (36) Violating a federal law, a state law or a rule applicable to the practice of medicine.
- (37) Prescribing or dispensing controlled substances or prescription-only medications without maintaining adequate and appropriate patient records.
- (40) Any conduct or practice that endangers a patient's or the public health or may reasonably be expected to do so.

ORDER

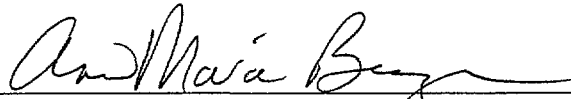
Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED THAT:**

1. Philo Rogers, D.O. ("Respondent") license Suspension issued on August 25, 2001 is terminated effective December 8, 2001.
2. Respondent is hereby issued a **DECREE OF CENSURE**.
3. Respondent's Board License Number 2809 will be placed under **PROBATION** for five (5) years and he shall comply with the terms and conditions of probation as set forth herein:
4. From the date of this Order, Respondent shall participate in a mini-residency program in the area of quality of care. The mini-residency program shall be approved in advance by the Board's Executive Director or designee. The mini-residency requirement of this Board order is in addition to the CME requirement that Respondent needs to maintain his osteopathic medical license in Arizona.
5. Respondent shall undergo random chart reviews by the Board's staff or designee. The random chart review shall consist of a minimum of ten charts done on a quarterly basis. The chart reviews will insure appropriate prescribing and whether or not pain contracts are in use.
6. Respondent shall be restricted from prescribing Schedule II medications.
7. In the event Respondent moves and ceases to practice medicine in Arizona, he shall give written notice to the Board of his new residence address within twenty (20) days of moving; and, the terms and duration of probation may be stayed by the Board until Respondent returns to practice medicine in Arizona.
8. Respondent shall continue to meet all licensing requirements such as continuing medical education and renewal requirements including applicable fees pursuant to A.R.S. § 32-1825.

9. Respondent's failure to comply with the requirements of this Order shall constitute unprofessional conduct as defined at A.R.S. § 32-1854(26), as amended, and may be considered as grounds for further disciplinary action (e.g., suspension or revocation of license) in the event that Respondent fails to comply with any of the requirements of this Order.

ISSUED this 13th day of December, 2001.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

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Served by personal service or
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of December, 2001 to:

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Drug Enforcement Administration
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Phoenix AZ 85012

Barbara Meyer